

Title	Sexual Harassment (amend canon 3B(5) and adopt canon 3C(5) of the California Code of Judicial Ethics)
Summary	These proposals would strengthen the existing canon that prohibits sexual harassment and clarify that sexual harassment is impermissible during the performance of administrative duties as well as judicial duties.
Source	Supreme Court Advisory Committee on the Code of Judicial Ethics
Staff	Mark Jacobson, 415-865-7898
Discussion	<p>Currently, the only reference to sexual harassment in the California Code of Judicial Ethics is in the commentary following canon 3B(5). That canon prohibits judges from manifesting bias or prejudice by words or conduct in the performance of judicial duties. The commentary states: “A judge must refrain from speech, gestures, or other conduct that could reasonably be perceived as sexual harassment.”</p> <p>The Supreme Court Advisory Committee on the Code of Judicial Ethics has recommended to the Supreme Court that the attached amended and proposed canons be circulated for comment. The committee recommended that canon 3B(5) be strengthened by modifying the language of the commentary slightly and moving it into the canon itself.</p> <p>In addition, the committee recommended that another canon be adopted that would specifically address sexual harassment in the context of a judge’s administrative duties. Canon 3B(5) applies to a judge’s activities during the performance of “judicial duties,” as distinct from administrative duties, which are addressed in the proposed canon 3C(5). Both canons are intended to strengthen and make explicit the prohibition against sexual harassment.</p> <p>The text of the proposed canons is attached.</p>
	Attachment

Canon 3B(5) of the California Code of Judicial Ethics would be amended effective January 1, 2004, to read:

Canon 3B(5):

A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status. A judge shall not engage in speech, gestures, or other conduct that could reasonably be perceived as sexual harassment.

~~**ADVISORY COMMITTEE COMMENTARY**~~——

~~*A judge must refrain from speech, gestures, or other conduct that could reasonably be perceived as sexual harassment.*~~

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Canon 3C(5) of the California Code of Judicial Ethics would be adopted effective January 1, 2004, to read:

1 **Canon 3C(5):**

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3 A judge shall perform administrative duties without bias or prejudice. A judge shall
4 not, in the performance of administrative duties, by words or conduct manifest bias
5 or prejudice, including but not limited to bias or prejudice based upon race, sex,
6 religion, national origin, disability, age, sexual orientation, or socioeconomic status.
7 A judge shall not engage in speech, gestures, or other conduct that could reasonably
8 be perceived as sexual harassment.